UOL Credit Sdn Bhd v Coral Fields Resources Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO D5-22-405 OF 1996
KAMALANATHAN RATNAM JC
19 MAY 1997

Civil Procedure *— Pleadings — Statement of claim — Exhibit to — Exhibits were in the English language without a translation in the national language — Whether statement of claim was defective — Rules of the High Court 1980 O 92 r 1*

Moneylenders *— Accounts — Statement of — Production of — Whether statement of accounts produced was an exhibit — Whether such statement must be accompanied by a translation in the national language — Moneylenders Act 1951 ss 19, 21 & First Schedule — Rules of the High Court 1980 O 92 r 1*

The respondent, a licensed moneylender, gave a loan amounting to RM2,511,072 to the first appellant as borrower. The second appellant was the guarantor for the loan and a guarantee was entered into between the first and second appellant respectively with the respondent.

In compliance with s 21 of the Moneylenders Act 1951 ('the Act'), the respondent produced a statement of accounts as prescribed in s 19 of the Act and exhibited the statement of accounts as annexure 1 to the statement of claim. In compliance with O 79 r 3 of the Rules of the High Court 1980 ('the RHC'), the respondent had, in the statement of claim, given all the necessary particulars in the national language. Although not required to do so, the respondent had also, for convenience, annexed to the statement of claim — by way of annexure 2 — a schedule in the English language giving the required particulars pursuant to O 79 r 3 of the RHC. The senior assistant registrar allowed the respondent's application for leave to enter summary judgment for the sum payable. The appellant appealed.

The appellant raised two issues, namely that: (i) the respondent's statement of claim itself was defective because it contained annexures 1 and 2 which were in the English language and that the same ought not to be received by virtue of O 92 r 1 of the RHC; and (ii) that the memorandum signed was not a bona fide transaction as the second appellant had averred that RM2.5m was granted to the first appellant which only had a paid-up capital of RM2.

Held, dismissing the appeal:

(1) As the statement of accounts produced by the respondent was an exhibit, O 92 r 1 of the RHC allowed for the exhibit in the English language to be used with or without a translation thereof in the national language (see p 430I).

(2) There was no need for the respondent to have annexed annexure 2 to the statement of claim. Annexure 2 was attached to the

statement of claim only as a matter of convenience. There was therefore no need for it to be in the national language (see p 431B–C).

(3) It was clear that it was the second appellant who requested the respondent to grant the loan to the first appellant and that the sum of RM2.5m was to be utilized for the working capital of the first appellant. If the second appellant was of the view that lending money to a two-dollar company was not bona fide, then he ought not to have given his own personal guarantee (see p 431D–F).

[Bahasa Malaysia summary

Penentang, seorang pemberipinjam wang berlesen, telah memberikan pinjaman sebanyak RM2,511,072 kepada perayu pertama sebagai peminjam. Perayu kedua merupakan penggerenti pinjaman tersebut dan suatu gerenti diikat di antara perayu pertama dan perayu kedua masing-masing dengan penentang.

Menurut s 21 Akta Pemberipinjam Wang 1951 ('Akta tersebut'), penentang telah mengemukakan penyataan akaun seperti yang dikehendaki oleh s 19 Akta tersebut dan telah mengekshibitkan penyataan akaun sebagai lampiran 1 kepada pernyataan tuntutan. Menurut A 79 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), dalam pernyataan tuntutan, penentang telah memberikan semua butir-butir yang diperlukan dalam bahasa kebangsaan. Walaupun tidak dikehendaki berbuat demikian, untuk kemudahan — melalui lampiran 2 — penentang telah melampirkan suatu jadual dalam bahasa Inggeris yang memberikan butir-butir perlu menurut A 79 k 3 KMT. Penolong kanan pendaftar telah membenarkan permohonan penentang untuk kebenaran memasukkan penghakiman terus untuk jumlah yang harus dibayar. Perayu membuat rayuan.

Perayu telah membangkitkan dua isu, iaitu bahawa: (i) pernyataan tuntutan penentang adalah cacat kerana ianya mengandungi lampiran-lampiran 1 dan 2 dalam bahasa Inggeris dan bahawa ianya tidak diharus diterima disebabkan A 92 k 1 KMT; dan (ii) memorandum yang ditandatangani bukan suatu transaksi bona fide kerana perayu kedua telah menyatakan bahawa RM2.5 juta telah diberikan kepada perayu pertama yang mempunyai modal berbayar sebanyak RM2 sahaja.

Diputuskan, menolak rayuan:

(1) Oleh kerana penyata akaun yang dikemukakan oleh penentang merupakan suatu ekshibit, A 92 k 1 KMT membenarkan ekshibit dalam bahasa Inggeris digunakan dengan ataupun tanpa penterjemahan dalam bahasa kebangsaan (lihat ms 430I).

(2) Tidak perlu untuk penentang menambahkan lampiran 2 kepada pernyataan tuntutan. Lampiran 2 telah dikepilkan kepada pernyataan tuntutan sebagai kemudahan sahaja. Maka ianya tidak perlu diterjemahkan ke dalam bahasa kebangsaan (lihat ms 431B–C).

(3) Adalah jelas bahawa perayu kedualah yang meminta supaya penentang memberikan pinjaman kepada perayu pertama dan bahawa jumlah RM2.5 juta adalah untuk digunakan sebagai modal kerja perayu pertama. Jikalau perayu kedua adalah berpendapat bahawa meminjamkan wang kepada sebuah syarikat dua ringgit adalah tidak bona fide, maka dia tidak patut memberikan gerenti persendiriannya (lihat ms 431D–F).]

Notes

For cases on the production of statement of accounts, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 396–402.

For cases on statement of claim, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2640–2648.

Case referred to

Teja Singh v Rattan Singh [1961] MLJ 39 (refd)

Legislation referred to

Moneylenders Act 1951 ss 19, 21
Rules of the High Court 1980 O 79 r 3, O 92 r 1

KS Ong (*KS Ong & Co*) for the plaintiff/respondent.
Saran Singh (*Saran Singh & Co*) for the defendants/appellants.

Cur Adv Vult

Kamalananthan Ratnam JC: This was an appeal against the decision of the learned senior assistant registrar ('the SAR') allowing summary judgment against the defendants/appellants. The plaintiff/respondent, a licensed moneylender, gave a loan amounting to RM2,511,072 to the first appellant as borrower payable as at 24 April 1996 together with interest on the sum of RM2.5m at the rate of 10.25% per annum calculated on a monthly basis from 25 April 1996 until full settlement and costs. The second appellant was the guarantor for the loan which was granted pursuant to a memorandum of loan and a guarantee both dated 9 October 1995 entered into between the first and second appellants respectively with the respondent.

In compliance with s 21 of the Moneylenders Act 1951 ('the Act'), the respondent produced a statement of accounts as prescribed in s 19 of the Act and exhibited the same as annexure 1 to the statement of claim. In compliance with O 79 r 3 of the Rules of the High Court 1980 ('the RHC'), the respondent had, in the statement of claim, given all the necessary particulars in the national language. Although not required to do so, the respondent had also, for convenience, annexed to the statement of claim by way of annexure 2, a schedule in the English language, giving the required particulars pursuant to O 79 r 3 of the RHC. On 27 September 1996, the learned SAR allowed the respondent's application for leave to enter summary judgment for the sum of RM2,511,072 payable as at

24 April 1996 together with interest on the sum of RM2.5m at the rate of 10.25% per annum calculated on a monthly basis from 25 April 1996 until full settlement and cost of RM350.

The appellants raised two issues, namely: (i) that there was non-compliance with O 92 r 1 of the RHC; and (ii) that the loan was not a bona fide transaction.

Non-compliance with O 92 r 1 of the RHC

The appellants argued that the statement of claim was defective because the respondent's statement of claim itself contained annexures 1 and 2 which were in the English language and that the same ought not to be received by this court by virtue of O 92 r 1 of the RHC which reads:

> 92 *Language of documents*
>
> (1) Any document required for use in pursuance of these rules shall be in the national language, and may be accompanied by a translation thereof in the English language:
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> Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

Section 21(1) of the Act which is relevant to this case reads:

> 21 *Accounts under s 19 to be produced when suing in court*
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> (1) Where proceedings are taken in any court by a moneylender for the recovery of any money lent after the commencement of this Act or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, he shall produce a statement of his account as prescribed in s 19.

Section 19(1) of the Act which is relevant to this case reads:

> 19 *Obligation to supply information as to state of loan and copies of documents relating thereto*
>
> (1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act, the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of fifty sen for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement of account in English figures signed by the moneylender or his agent showing:
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> (a) the date on which the loan was made, the amount of the principal of the loan and the rate per centum per annum or the amount of interest charged; and
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> (b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made; and
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> (c) the amount of all sums due to the moneylender for principal but unpaid and the dates upon which they became due and the amount of interest due and unpaid in respect of each such sum; and

(d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due. A

A statement of account given in the form in the First Schedule shall be deemed to comply with the requirements of this subsection.

It is clear upon reading s 19 of the Act that the statement of accounts produced by the respondent has to be in 'English figures' as prescribed by B s 19 of the Act and annexure 1 is in the form set out in the First Schedule to the Act. Section 21 of the Act requires the moneylenders 'to produce a statement of accounts as prescribed in s 19'. The *Law Lexicon with Legal Maxims* (Reprint Ed) 1993 by Ramanathan Alyar defined 'produce' as follows at p 1025: C

Produce

As a noun the word has no definite, exact, and particular meaning; it may be used in a larger or more restricted sense. As a verb: To bring forward; to show or exhibit: to bring into view or notice; as, to produce books or writings at trial in obedience to a subpoena to bring forward; to offer to view or notice; to show; to manufacture, make. D

In *Teja Singh v Rattan Singh* [1961] MLJ 39, the moneylender failed to produce the statement of accounts pursuant to s 21(1) of the Moneylenders Ordinance 1951 when the original summons was issued. In holding the failure to produce as fatal, Thomson CJ said at p 39: E

For myself I do not consider it necessary to examine the grounds of appeal in detail. The law in this country is perfectly well-settled and has been settled since as long ago as 1941. It is no case of a moneylender being taken by surprise by a new technical defence. The law has been well known to the moneylending community since 1941 and was discussed as recently as 1956 in the case of *Ramasamy Chettiar v Wong Poh Fatt* [1960] MLJ 43 where F Pretheroe J, after referring to the decision of Terrell J, in the earlier case of *Arjan Singh v Hashim Angullia & Ors* [1941] MLJ 55 held (I am reading from the headnotes):

'When a moneylender embarks on any proceedings in any court, a statement of his account as prescribed by s 21(1) of the Moneylenders Ordinance 1951, must be produced at the time the originating summons G was filed. Non-compliance with this statutory requirement is an irregularity which the court cannot waive and will entitle the respondent to have the originating summons dismissed with costs.'

It is beyond doubt that this case falls clearly within these words. The account was not produced when the originating summons was issued and that was fatal to any subsequent proceedings on that summons. In the H circumstances I am disposed to go no further than to say that the appeal should be dismissed on that ground with costs. The deposit in court should be paid out to the respondent against his taxed costs.

In the circumstances, it is my judgment that to produce means to show or exhibit. As the statement of accounts produced by the respondent was an I exhibit, O 92 r 1 of the RHC allows for the exhibit in the English language to be used as an exhibit with or without a translation thereof in the national language.

A In respect of annexure 2 which document the appellant contends ought also to be in the national language in compliance with O 92 r 1 of the RHC, I am satisfied upon reading the statement of claim that every item as required pursuant to O 79 r 3(a)–(j) has been stated in the statement of claim which was pleaded in the national language. I find that there was no need for the respondent to have annexed annexure 2 to the B statement of claim. The respondent stated as an explanation that it was a matter of convenience and by way of a summary that annexure 2 was attached to the statement of claim. Since it was my finding that all details as required under O 79 r 3(a)–(j) were already pleaded in the statement of claim in the national language and coupled with my further finding that C annexure 2 was redundant, the submission of the appellant that annexure 2 ought to have been in the national language must perforce fail.

The loan was not a bona fide transaction

As their second ground of appeal, the appellants argued that the D memorandum signed was not a bona fide transaction as the second appellant had averred in his affidavit (encl 8) that RM2.5m was granted to the first appellant which only had a paid-up capital of RM2 only. The argument emanating from the second appellant must be rejected. If the second appellant was of the view that lending money to a two-dollar company was not bona fide, then he ought not to have given his own personal guarantee. E Indeed from the letter of offer (exh CCK9 to encl 9), it was clear that it was the second appellant who requested the respondent to grant the loan to the first appellant and that the sum of RM2.5m was to be utilized for the working capital of the first appellant. There is evidence (exh CCK4 to encl 6) to show that the second appellant had signed a letter on behalf of F the first appellant and enclosed a cheque for RM128,476.03 being settlement of interest payment for period ending 8 April 1996 and sought a renewal of the same loan facility for a further period of six months. In all the circumstances, the cry of a non-bona fide transaction could not be heard by this court.

G Since these were the only two issues raised and as I have rejected both as being totally unmeritorious, there was no need for me to consider any further issues not raised by the appellants. In the circumstances, I do not intend to dwell on the issues raised by the respondent that there were no triable issues. I therefore had no hesitation in dismissing this appeal with costs.

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Appeal dismissed.

Reported by Mariette Peters-Goh

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